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Important Things to Know About Encryption Items - Part I

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The Law Governing the Control of Commodities and Services (Order Regarding the Engagement in Encryption Items) - 1974 (Hereinafter: "Encryption Order"), regulates the use of encryption items while balancing individual and industry requirements with the need for proper supervision of the distribution of encryption items - in order to prevent these items from reaching countries designated as state sponsors of terrorism, terrorist organizations and criminal entities; and in order to prevent these items from being put to improper use.

According to the Encryption Order, anyone wishing to engage in encryption items must receive a license to do so from the Director-General of the Israel Ministry of Defense.

What is Encryption?

The Declaration Regarding the Control of Commodities and Services (Engagement in Encryption Items) - 1974, which was amended in 1998, (Hereinafter: "The Declaration"), defines encryption as scrambling data, entirely or in part, by modifying the data or how it is transferred, using mathematical equations or algorithms, whether by means of a key or not, and in such a way as to enable it to be used to recover the original data or a part thereof; as well as commonality of the encryption keys.

What is an Encryption Item?

The Declaration defines an encryption item as each of the following:

- a. **"Encryption Tool"** - software or device, including a series, part or model thereof that cause or are intended to cause encryption or decryption, including whether or not the encryption or decryption are done by means of another device or software;
- b. **"Encryption Key"** - data that are used in the encryption method for encrypting or decrypting, and that are subject to change;
- c. **"Encryption-Related Record"** - any form of description, including an entry, drawing, photograph, recording on magnetic media or anything programmed in the memory of a computerized system or another electronic device, of an encryption tool, of an encryption

method, of an encryption key, or a part thereof or of their attributes or of their performance capability, whether they exist or not;

- d. **"Encryption Method"** - an approach, plan, equation or algorithm for encrypting or decrypting.

What is "Engagement in Encryption Items" That Requires a License?

The Declaration defines "engagement in encryption items" as a broad range of activities, which includes: development, production, modification, conversion, shearing, improvement, the addition or removal of features from one encryption item following integration, purchase, use, possession, transfer, handling from one location to another or from one person to another, importation, distribution, sale or negotiations to export whether in writing or unwritten, through all means of communications and regardless of results; or the exportation of encryption items, the exportation of know-how and/or guidance and/or training which relates to engagement in encryption items, including an Israeli corporation that is controlled by someone who is not a resident of Israel.

In other words, unlike the supervision of the exportation and marketing of other dual-use goods, when the goods in question include encryption components, even if they are designated for civilian industry, the supervision is also imposed on the development, production and even the possession and transfer of the product, and not only on its importation, exportation, sale and marketing.

On the other hand, the Israel Ministry of Defense's declared policy distinguishes between the personal use of an encryption item and other uses:

Civil "personal use" for the requirements of a certain individual (or company, organization, non-profit organization, etc.), without the transfer of the encryption item to another individual, does not require a license for Engagement in Encryption Items.

Any other use, such as development, distribution, sale and export, necessitates applying for a license for Engagement in Encryption Items. In addition, if the product or Encryption Item was purchased from a license holder for sale and distribution of Commercial Encryption Items, or the product or Encryption Item was "Downloaded" from the Internet for personal use for Data Security or Electronic Signature, the person is exempted from applying for a license for Engagement in Encryption Items.

In the next part of this article, we will discuss aspects of enforcement resulting from violations of the order and certain exemptions.

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